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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 30, 2002

COMMONWEALTH OF VIRGINIA, ex rel.

TERRY L. STROCK, et al.

CASE NO. PUE010716

v.

B & J ENTERPRISES, L.C.

ORDER

Pursuant to the Small Water or Sewer Public Utility Act, § 56-265.13:1, et seq. of the Code of Virginia ("Act"), B & J Enterprises, L.C. ("B & J" or "Company"), notified its customers and the State Corporation Commission ("Commission") of its intent to increase its monthly sewer rates from \$40.00 to \$95.00, effective for service rendered on and after December 13, 2001. In response to a petition from B & J customers objecting to the proposed rate increase, the Commission suspended the Company's proposed rate increase for a period of 60 days, through February 10, 2002, by Preliminary Order issued December 12, 2001.

The Preliminary Order further directed the Company and the Staff to file a response to a claim raised in a letter dated November 21, 2001, filed by Joan G. Moore, a B & J customer,

asserting that B & J is barred by § 56-265.13:6 of the Act from implementing a rate increase until April 2002.<sup>1</sup>

B & J and the Staff, by counsel, filed their respective Responses on January 9, 2002. In its response, B & J states that in its last rate case, Case No. PUE990616, the Company proposed a monthly service charge of \$34.00 and that this rate was effective September 9, 1999. B & J notes that it also proposed other charges and fees, such as availability fees and connection fees. The Company states that the Commission approved by Final Order a monthly service charge of \$40.00 instead of the originally proposed rate of \$34.00. According to B & J, the effective date of the \$40.00 rate approved by the Commission was September 9, 1999, the effective date of the rates proposed in Case No. PUE990616. B & J states that this date is reflected in the Company's currently effective tariff, which was accepted by the Commission for filing on May 1, 2001. Because the proposed increase from \$40.00 to \$95.00 is not within twelve months of September 9, 1999, B & J asserts it is therefore permissible under § 56-265.13:6.<sup>2</sup>

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<sup>1</sup> Section 56-265.13:6 B states: "A small water or sewer utility shall not implement an increase in the utility's rates or charges more than once within any twelve-month period."

<sup>2</sup> Alternatively, B & J argues that it meets the "emergency" exception of § 56-245.

The Staff stated in its response that the Commission's Order of March 20, 2001, authorized B & J to assess a monthly charge of \$40.00 for sewer service, and that this amount constituted an increase from the monthly charge of \$34.00 that was proposed by the Company in its 1999 certificate filing, and which the Commission allowed B & J to implement, subject to refund, by Commission Order of September 9, 1999. The Staff concluded that since B & J apparently implemented the Commission-authorized rate increase from \$34.00 to \$40.00 effective April 2001, § 56-265.13 B requires that any subsequent rate increase by B & J must be delayed until April 2002.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Company may implement, on an interim basis and subject to refund with interest, its proposed rate increase for sewer service, effective upon the expiration of the 60-day period of suspension.

In our September 9, 1999, Order Docketing Case and Suspending Rates, we authorized B & J to implement, subject to refund, its proposed monthly rates for sewerage service. While we permitted the Company to implement its proposed charges for monthly service at that time, we suspended all but \$3,000 of B & J's proposed \$17,500 service connection fee for 150 days, and we suspended altogether the Company's proposed \$5,000 reconnection fee for a like time.

After receipt of the Hearing Examiner's Report, we entered an Order on March 20, 2000, wherein we authorized a connection fee of only \$5,000 (effective on and after the date of that Order) instead of the Company-proposed \$17,500 charge, and we denied completely B & J's proposed \$5,000 re-connection fee.<sup>3</sup> However, in order to permit the Company the opportunity to recover its expenses, we established a monthly rate of \$40 in place of the \$34 proposed by B & J.

The Commission may approve in its final orders individual rates that are higher (or lower) than the rates proposed by a utility, provided the total level of revenues do not exceed that which has been proposed and noticed by the utility. In B & J's last case, the Company proposed rates for several services that we denied in full or reduced considerably. Even with our authorization of an additional \$6 per month charge for sewer service, the total level of revenues for B & J approved by the Commission were less than that proposed by the Company in its 1999 application.

Section 56-265.13:6's prohibition on multiple rate increases within a twelve-month period is a limitation on the water or sewer public utility company, not on the Commission.

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<sup>3</sup> We also denied a proposed \$20 per month availability fee, except for those lots owned by the Company and for which it can develop appropriate legal instruments to notify potential purchasers of the existence of an availability fee.

Our approval of final rates in March 2001 that differed from those proposed by the Company and implemented on an interim basis and subject to refund in September 1999 does not constitute a separate rate increase implemented by the Company within the meaning of § 56-265.13:6 B. We disagree with the Staff's position on this matter. B & J shall be permitted to implement its proposed increase, and the matter will be assigned to a hearing examiner for further proceedings, including an investigation by the Staff of the proposed rate increase, consideration of the additional requests made by the Company in its January 9, 2002, Response,<sup>4</sup> and a public hearing.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-265.13:1 of the Small Water or Sewer Public Utility Act and our Preliminary Order of December 12, 2001, B & J is authorized to implement, on an interim basis and subject to refund with interest, its proposed rates for monthly sewer service, effective February 11, 2002.

(2) As provided by § 12.1-31 of the Code of Virginia and the Commission's Rules of Practice and Procedure, 5 VAC 5-20-120, a hearing examiner is appointed to conduct all further

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<sup>4</sup> B & J requested, among other things, that it be permitted to proceed without counsel so as to avoid additional rate case expenses. The Company may limit its legal expenses while conforming with the Commission's Rules of Practice and Procedure. Company representatives may present facts, figures, or factual conclusions without the aid of legal counsel. The nature and scope of the public hearing required by § 56-265.13:6 will dictate the extent to which B & J must retain counsel.

proceedings in this matter on behalf of the Commission and to  
file a final report.